



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 9, 1998

Mr. Walter Borgfeld, Jr.
Attorney at Law
P.O. Box 151556
Lufkin, Texas 75915-1556

OR98-2645

Dear Mr. Borgfeld:

You ask a question in regard to Open Records Letter No.98-1876 (1998).¹ Your request was assigned ID# 119371.

Your question concerns the portion of Open Records Letter No. 98-1876 that determined that the State Board of Plumbing Examiners (the "board") may not withhold from public disclosure board member notes taken during executive session. You ask whether a board member who releases such notes is in violation of section 551.146 of the Government Code.

Open Records Letter No. 98-1876 concluded that the release of board member notes of a closed meeting is not governed by section 551.104 of the Government Code, a provision that proscribes the public release of a certified agenda or tape of a closed meeting except under court order. Thus, the ruling found that a release of board member notes does not constitute a release of a certified agenda or tape of a closed meeting for purposes of section 551.104.

Governmental bodies that conduct closed meetings must keep certain records of those meetings, namely, a certified agenda or a tape recording of the meeting. Gov't Code § 551.103. Section 552.146 provides for criminal penalties² for knowingly disclosing to the public a certified agenda or tape recording of a closed meeting and provides that an offense is committed if:

¹We assume you are asking your question as a member of the Texas State Board of Plumbing Examiners, although the letterhead of your letter was not the board's letterhead. See Gov't Code §§ 402.042 (authorizing attorney general to issue opinion when requested by specified parties), 552.301 (permitting governmental body to request open record ruling).

²An offense under section 552.146 is a class B misdemeanor. Gov't Code § 552.146(b).

(a) An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public the certified agenda or tape recording of a meeting that was lawfully closed to the public under this chapter.

We believe this penalty provision applies only to the records of executive sessions which governmental bodies are required to keep pursuant to section 551.103 of the Government Code. *See* Attorney General Opinion JM-1071 (1989) (finding predecessor provision does not prevent governmental body member from talking about executive session). The breadth of the penalty provision correlates with the record keeping provision as well as with section 551.104. As the penalty provision only applies to the knowing public disclosure of a closed meeting's certified agenda or tape recording, the provision does not prohibit board members from releasing notes taken during the executive session pursuant to the Open Records Act.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Deputy Chief
Open Records Division

KHH/mjc

Ref.: ID# 119371

cc: Mr. Russell Wyman
2807 Andrea Lane
Dallas, Texas 75228
(w/o enclosures)